

SPECIAL CIVIL APPLICATION No 724 of 1985

Hon'ble MR.JUSTICE S.D.PANDIT

JJJ

J

5. Whether it is to be circulated to the Civil Judge? No

Versus

STATE OF GUJARAT

MR S.S.Dave A.G.P. for Respondent No. 1

Date of decision: 01/08/96

This petition is filed under article 226 of the Constitution of India by three teachers who are working with Nagar Palika Primary School, Jetpur to challenge the order passed on 11.2.85 by the Administrative Officer of

Nagar Palika Education Committee, Jetpur (hereinafter referred to as the Committee).

2. Petitioner no.1 Krishnaprasad S.Joshi was appointed as a primary teacher in the old District Local Board on 22.6.57. He was placed at Navda School, Taluka Vanthali. District Junagadh from 1968 to 1973. It is further his case that on 1.1.75 he was transferred from Junagadh district to Rajkot district and then he was placed at the disposal of Nagar Palika Primary School, Jetpur on 11.4.83 and he was working there since then.

3. Petitioner No. 2 Pramodrai B.Pandya was initially appointed as Assistant Teacher in the District Local Board, Rajkot on 9.9.58. He continued to work since then as Assistant Teacher and it is his claim that he was promoted to the post of Headmaster on 9.2.83. Petitioner No.3 Nalinkant G. Raval was recruited as Assistant Teacher on 22.6.57 in the District School Board and it is his claim that he was promoted to the cadre of Headmaster with effect from 9.2.83. All the three petitioners are working with the said committee. It is their claim that seniority list was prepared on 14.2.77 but the said seniority list was a tentative one and in the said seniority list, petitioners nos 1,2 and 3 respectively shown at Sr.No. 54, 61 and 51. The petitioners had not disputed their placements. It is their further case that subsequently said seniority list was changed and the petitioner no.1 was placed at sr. no.126. This act, according to the petitioner, was an illegal act and that the same has been committed malafide in order to accommodate certain persons. It is also alleged that two persons viz. V.M. Vaghela and M.S.Dhandhal were promoted to the cadre of Headmaster but their name did not appear in the said seniority list of 1977. It is their further contention that the seniority list prepared in the year 1977 was correct and there was no reason to alter the same. They contend that due to the Resolutions passed on 10.11.78 and 30.7.77 there was no necessity to make any change in the said seniority list.

3. It is their further claim that the respondent no.2 has issued an order dated 11.2.85 and according to them, said order in effect going to revert the petitioners from the post of Headmaster to the post of Assistant Teachers. It is further contended that said action of reverting them is illegal and unjust and is in breach of articles 14 and 16 of the Constitution of India. They further contended that the petitioners were

promoted as headmasters in 1983 and they were getting Rs. 20/- p.m. as allowance and by effecting the impugned order, they would be deprived of the said allowance and thereby they would be put to loss. They have further averred that 4 persons at sr.nos. 1,5,6 and 7 in the order dated 11.2.85 have refused to accept the post of Headmaster and yet they have been forced to take up the said post by the impugned order. They have therefore, sought for quashing the said order dated 11.2.85 issued by the respondent no.2.

4. Though the respondents were duly served, they have not filed any counter affidavit. But the respondents are represented by Mr. Dave, A.G.P.

5. This petition has come up for final hearing initially on 11.7.96. But on that day, the matter was called out twice but none has turned up and hence it was dismissed at about 2.45 p.m. But thereafter Mr. Rana L.A. for the petitioner appeared and at the oral request of Mr. Rana the order of dismissal of the petition was recalled and the petition was restored to file with a direction to the petitioner to file translation of the documents annexed to the petition and the matter was fixed on 25.7.96. On 25.7.96 at the request of Mr. Rana the matter was adjourned to today. Today Mr. Rana has not turned up till 4.00 p.m. Thus neither the petitioners nor their advocate has remained present today. But as this petition is of the year 1985 I proceed to dispose of the same on merits in view of the fact that the petitioners have already obtained ex parte order of interim injunction and have seen that said order is not implemented for the last more than 11 years.

6. Though the petitioners have not produced translation of the documents annexed to the petition, I have gone through the documents annexed to the petition and each and every document is translated to be in the court by L.A.G.P. Mr. Dave for the respondents.

7. It must be mentioned here that if the petition of the petitioner is read minutely, then it would be quite clear that out of the three petitioners, petitioners 2 and 3 were transferred and posted in the said Committee at Jetpur on administrative grounds as can be seen from their transfer orders produced at Annexure.A to the petition. So the petitioners nos 1 and 2 were transferred and assigned to Nagar Palika Primary School, Jetpur for administrative exigencies by the order dated 8.2.83 at Annexure.A. Petitioner no.1 Krishnaprasad S

Joshi was posted with the school of the Committee at Jetpur by the order dated 11.4.83 at Annexure.3. But the said order clearly shows that he was transferred and posted with the school of the said Committee at his own request. The petitioner no.1 was not transferred and posted with the Municipal School Committee on administrative exigencies or convenience but at his own request. The petitioners themselves have referred to two Government Resolutions dated 30.7.1977 and 10.11.78. If both these Resolutions are read together, then it would be quite clear that both these G.Rs. made it clear that those persons who were transferred on administrative grounds or for administrative exigencies, they would not lose their seniority in their original cadre. But a person who seeks transfer on his own volition and goes to Nagar Palika or any other District Board, then his name in the seniority list would be at the bottom. Therefore, in view of the Annexures A and B it would be quite clear that , the petitioner no. Krishnaprasad Joshi will have the placement at the bottom of the list on his joining service of the Municipal School Committee as he had sought his posting there at his own volition ; whereas the petitioners nos 2 and 3 have been transferred and posted there for administrative exigencies and therefore, their seniority would not be affected. In the tentative seniority list prepared in the year 1977 which is produced at Annexure.C shows the placement of the petitioners nos 2 and 3 at 51 and 61; whereas the placement of petitioner no.1 Krishnaprasad Joshi at sr. no.54. The petitioners themselves have clearly stated that said seniority list was tentative one. Petitioner no.1 Krishnaprasad Joshi had joined the service on 22.2.57. Petitioner no.2 Pramodrai Pandya has also joined the service on 22.6.57 . But in view of the Resolution dated 30.7.77 at Annexure.E and the circular dated 10.11.78 at Annexure.F, the placement of the petitioner no.1 has been changed from 54 to 126, as petitioner no.1 himself had voluntarily opted for his transfer and posting with the Municipal School Committee. Therefore, that placement of him could not be said to be illegal or improper. From the documents produced by the petitioners as well as from the averments made in the petition, it is not possible to hold that there was any alteration or change about the placement in the seniority list of petitioners nos. 2 and 3. So petitioners nos 2 and 3 not at all affected by any act of the respondent.

8. The petitioners have come before the court making grievance as regards the letter or transfer order dated 11.2.85. It is contended by the petitioners that they

have been reverted from Headmaster to Assistant Teacher by this transfer order. In this connection, we have to read Annexure.G in order to find out as to whether the averments made in the petition that they are reverted by the said transfer order is correct or not. Said transfer order is reproduced as under:

O/W No.929,
Office of the Administrative Officer,
Nagar Primary Education Committee,
Jetpur Dt. 11.2.85

OFFICE ORDER

" The following male-female teachers are transferred as per the meeting held, under section 24 of the Bombay Primary Education Act 1947 in the interest of administration. The implementation of this order shall be made with immediate effect. The arrangement should be done as to send this office the copy of the report relieving the employees.

No.	Name of employee	Present place of service	Place of transfer hereafter.
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1.	Smt. Pushpaben Madhushanker Pandit.	Astt. School No. 2	Principal School no. 3
2.	Shri Shantilal Revashanker Joshi	" " 16	" " 15
3.	Shri Hiralal Lakhamshi Dave	" " 17	" " 17
4.	Shri Kantilal Manishanker Pandya	" " 5	" " 6
5.	Shri Nathalal Keshavji Mehta	" " 5	" " 8
6.	Shri Balwantray Mangalji Vyas	" " 16	" " 16
7.	Shri Habibbhai Ibrahim Chauhan	" " 1	" " 11

8.Shri Merabhai Savjibhai	Kamdmla	Asstt.School				
	Principal	No.2				
	School No.3					
9.Shri Nalinkant Gaurishanker						
Raval	"	"	6	"	"	5
10.Smt.Parvatiben Dayadev						
Ravasiya	"	"	11	"	"	14
11.Shri Navnitray Pratapray						
Dave	"	"	8	"	"	11
12.Shri Krishnaprasad Ravjibhai						
Joshi	"	"	14	"	"	13.
13.Shri Pramodray Bhaishanker						
Pandya	"	"	17	"	"	12

Sd/- Illegible
Sd/-Administrative Officer
Nagar Primary Education Committee,
Jetpur."

If the above transfer order is seen then it would be clear that said order is only showing that petitioner no.1 is transferred from school no.14 to school no.13; whereas petitioner no.2 is transferred from school no.5 to school no.6 and petitioner no.3 from school no.6 to school no.5. Said transfer order nowhere mentions that by the said transfer they are being reverted from Headmaster to Assistant Teacher. It can be seen that petitioner no.2 is going from school no.5 to school no.6; whereas petitioner no.3 goes to school 6 from school no.5. and petitioners nos 2 and 3 are replacing one another. Petitioner no.1 is transferred from school no.14 to school no.13. It is not possible from the said transfer order to hold that on account of his transfer from school no.14 to school no.13, he is being reverted.

9. The petitioner no.1 was initially shown in the tentative seniority list at sr.no.54. But his placement in the said list has been changed from 54 to 126 as per the averments made by the petitioners in the petition. I have already mentioned earlier about the Annexure B produced by the petitioners and Annexure.B clearly mentions that the petitioner no.1 had voluntarily gone in

the municipal school at his sweet will and therefore, his placement in the seniority list would be as per Government Resolutions at the bottom in the cadre of Assistant Teacher and consequently, his placement seems to have been changed . But any way the petitioners have not sought to quash the said seniority list in their petition but they have sought the quashing of the transfer order but the transfer of an employee is an incident of service. The transfer in question could not be said to be malafide. As a matter of fact there is no allegation that the transfer is being made malafide and therefore, the transfer order could not be quashed and set aside. Thus I hold that present petition will have to be dismissed. I therefore, dismiss the same. Rule discharged. Interim relief granted earlier stands vacated. No order as to costs.

(S.D.Pandit.J)